

REMARKS / ARGUMENTS

In the office action of March 26, 2008, the Examiner has made final the restriction requirement issued previously and predicated on the special technical feature recited in claim 1, a pancreatic carcinoma-specific antigen 3C4-Ag, as disclosed in Hannan et al., *Molecular Biology of the Cell* 13:137A, November 2002 (reference A in Applicants' IDS of December, 2006) (hereinafter referred to as "Hannan et al.").

In the previous response filed January 30, 2008 (certificate of mail date), Applicants submitted to the Examiner that the Hannan et al. reference is a description of Applicants' own work and was not published more than one year before the priority date of the present application, January 17, 2003. The undersigned indicated to the Examiner on page 2 of the previously filed response, that Applicants would submit a Katz declaration under 37 C.F.R. §1.132, if required by the Examiner in order to have the restriction requirement withdrawn.

Since the Examiner has made final the restriction requirement, Applicants submit herewith a declaration under 37 C.F.R. §1.132 in which the inventors of the present application, *to wit*, Josef Michl, Stefan Bradu, Raquib Hannan and Matthew R. Pincus, aver that they believe they are the inventors of the above-identified application and that the names of J. Koehnke, A. Kolychkina, J. Khutoretskaya, A. Jones, and P.C. Nemes were included along with the inventors' names in the Hannan et al. article, but not as an indication that they were inventors of the subject matter of the above-identified application.

Thus, it is submitted that the technical feature recited in claim 1 is special and that therefore the groups are linked to form a single general concept under PCT Rule 13.1. Accordingly, Applicants respectfully request that the Examiner withdraw the finality of the restriction requirement, rejoin groups I-V, and examine on the merits all of the claims in this application. Since Applicants have previously traversed this restriction requirement, Applicants have reserved the right to petition the restriction requirement until after final action or allowance of claims to the elected group, and not later than appeal. 37 C.F.R. 1.114

Claims 1-3 have been rejected under 35 U.S.C. §102(a) as allegedly anticipated by Hannan et al. Authorship of an article by itself does not raise a presumption of inventorship with respect to the subject matter disclosed in the article. The content and nature of the printed publication, as well as the circumstances surrounding its publication must also be considered. Thus, co-authors may not be presumed to be coinventors merely from the fact of co-authorship. *In re Katz*, 215 USPQ 14, 18 (CCPA 1982).

As stated in the declaration submitted herewith, the inventors of the present application, *to wit*, Josef Michl, Stefan Bradu, Raquib Hannan and Matthew R. Pincus, aver that they believe they are the inventors of the invention disclosed in the above-identified application and that the names of J. Koehnke, A. Kolychkina, J. Khutoretskaya, A. Jones, and P.C. Nemes were included along with the inventors' names in the Hannan et al. abstract, because they were working under their direction and supervision, but not as an indication that they were inventors of the subject matter of the above-identified application.

Based on the declaration under 37 C.F.R. §1.132 submitted herewith, withdrawal of the rejection of claims 1-3 under 35 U.S.C. §102(a) as allegedly anticipated by Hannan et al., is warranted.

Claims 1-3 have been rejected under 35 U.S.C. 102(a) as allegedly anticipated by Fischer et al. (Midwood Science Awards American, October 26, 2002). Fischer has been cited for disclosing a pancreas carcinoma specific 3C4-Ag during the Intel Science Talent Search and an American Chemical Society Research Poster Session.


As averred in paragraphs 5 and 6 of the Rule 132 declaration submitted herewith, it can be plainly seen from page 2 of the reference that Rachel Fischer, Alicia Jones and Yuliya Khutoretskaya were high school students who did their work at SUNY downstate under the mentorship, supervision and direction of the lead inventor of this application, Dr. Josef Michel. The inventors have further averred in paragraph 7 of the declaration that these high school students did not invent the subject matter of the present application but rather were involved only with assay and testing features of the invention of the above-identified application and under the direction and supervision of inventor Josef Michl.

Thus, the content and nature of the Fischer et al. publication, as well as the circumstances surrounding its publication, discussed in the declaration submitted herewith, establish that the present invention was the original work of the named inventors of this application, and theirs alone. One's own invention, whatever the form of disclosure to the public, may not be prior art against oneself, absent a statutory bar. *In re Facius*, 161 USPQ 294, 302 (CCPA 1969), *cited with approval in In re Katz*, 215

USPQ 14 (CCPA 1982). Withdrawal of the rejection of Claims 1-3 under 35 U.S.C. §102(a) as allegedly anticipated by Fischer et al, is therefore warranted.

Accordingly, it is firmly believed that the present application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ann R. Pokalsky". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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